

BOARD OF ADJUSTMENT REPORT



MEETING DATE: 3/2/2005

ITEM No. 3

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT Milde Home Addition
13-BA-2004

The Board of Adjustment continued this case at the December 8, 2004 and the applicant requested a continuance at the February 2, 2004 meeting. The request was approved by a 4-1 vote.

REQUEST Request to approve a variance for a corner-lot front yard setback of 34 feet- 4 inches in lieu of the required 40 feet setback.

OWNER James & Leslie Milde
480-488-8808

APPLICANT CONTACT Leslie Milde
480-488-8808

LOCATION 39204 N Boulder View Drive

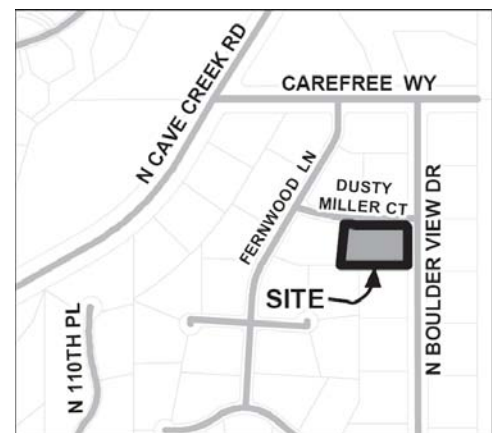
CODE ENFORCEMENT
ACTIVITY None

PUBLIC COMMENT Staff has received three E-mails in support of this variance case and proposed expansion as of the drafting of this report. Copies of the e-mails are attached to this report. (See Attachment #9)

ZONE R1-43 ESL (Single Family Residential, Environmentally Sensitive Lands)

ZONING/DEVELOPMENT
CONTEXT This 1-acre parcel is located on lot 17 of the Carefree Hills subdivision. This subdivision is located in the far northern portions of Scottsdale, located on the south side of Cave Creek Road approximately 3 1/2 miles east of Pima Road. The subdivision is surrounded by one-acre (R1-43 ESL) single family zoning to the west and south, 5-acre (R1-190 ESL) zoning on the vacant land to the east, and a golf course with open space (O-S) zoning to the North (across Cave Creek Road) within the Desert Mountain master planned community.

The Carefree Hills subdivision was platted in 1973 under Maricopa County jurisdiction with County-Rural-43 zoning. The City of Scottsdale annexed the subdivision July 2, 1984 and subsequently rezoned it to City R1-43.



ORDINANCE
REQUIREMENTS

Article V, Section 5.104.E.1.c requires a front yard of forty (40) feet along each street frontage for corner lots.

DISCUSSION

The applicant is requesting a zoning variance to build an 834 square foot addition onto an existing 3,100 square foot home located at the southwest corner of Boulder View and Dusty Miller. This application is unique in the fact that the existing home location is not in conformance with R1-43 setback requirements for corner lots. It is further compounded by the fact that the City issued a Building Permit on April 9, 1992 and a Certificate of Occupancy on October 5, 1992, which appears to endorse the existing home configuration. However, staff has been unable to conclude that the plan presented to the City and subsequently approved, was the plan that was actually used for the construction of the home as the site plan is missing from the City Records department. Neither staff nor the applicant, who is not the original owner, has been able to locate the actual City stamped plans showing the setbacks that were constructed. Also, staff has found no approved variances on the property during the records check. The existing home was constructed with a 20-foot setback along the Dusty Miller frontage where it should have been required a 40-foot setback per the Scottsdale Zoning Ordinance R1-43 development standards.

The City's has accepted the existing building setbacks as they currently exist and will not require the applicant to obtain a variance for what is already constructed. However, any new construction on the parcel, such as what is proposed with this application, will need to observe R1-43 district setbacks and development standards.

FINDINGS

- 1. That there are special circumstances applying to the property referred to in the application which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The applicant states the special circumstances relate to the fact that the previous owner constructed the home at the 20-foot setback line from Dusty Miller with City of Scottsdale approval.

Staff understands the unique circumstance created by the existing home setbacks. However, there are other corner-lot homes within this subdivision that were built to the required 40-foot setback requirement.

While the applicant is concerned with the existing non-conformity, and seeks to have the existing home included within this variance request, staff has taken the position this is not applicable. The existing home setback is not required to be modified as the City cannot condition a new building addition on correcting a non-conforming structure for which a permit was issued.

2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:

The applicant states that the only possible location for an expansion to the home is on the northeast portion of the home which would extend into the Dusty Miller required front yard setback by approximately 6-feet. The other sides of the home are limited to expansion due to septic tank location, wash (drainage) location and Natural Area Open Space easement locations. Staff has encouraged the applicant to modify, or widen out the proposed expansion so it could meet the 40-foot setback. The applicant stated (please see the narrative attached the report), that this would not possible due to the existing bathroom location, existing window locations, and an existing koi pond location in the front courtyard. The bathroom would need to be demolished and/or the bathroom window would need to be covered up by new building addition. Existing room windows would become covered up and the existing fountain would have to be demolished. The applicant also states that a wider addition design would clash with the original lines and elevations of the existing home.

While staff acknowledges modifying the proposed addition to meet the 40-foot setback may not be most desirable option for the owners, other options do exist to construct this addition within the required setbacks.

3. That special circumstances were not created by the owner or applicant:

The applicant states that the special circumstances were not created by the owners, but were created by the City of Scottsdale when they approved the original building with a 20-foot setback from Dusty Miller.

While the City is recognizing the existing building setback as permitted, the City's stance is that any addition is required to meet the setbacks of the applicable zoning district.

4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:

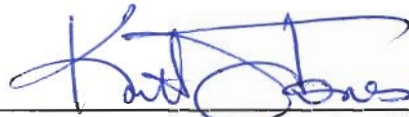
The applicant states that the addition will not affect anyone residing in the neighborhood or have no effect on the surrounding natural habitat. The location of the proposed addition is within the existing building structure nestled between the garage and existing house and not have a negative visual impact.

The proposed addition does not appear to pose any safety hazards to vehicular traffic, as it would be located outside of the sight distance visibility triangle. Staff has received two e-mails in support of this application as of the drafting of this report.

STAFF CONTACT



Keith Niederer, Planner
Report Author
Phone: 480-312-4211
E-mail: KNiederer@ScottsdaleAZ.gov



Kurt Jones, Current Planning Director
Phone: 480-312-2524
E-mail: Kjones@ScottsdaleAZ.gov

ATTACHMENTS

1. Project Description/narrative
2. Justification
3. Context Aerial
4. Aerial Close-up
5. Zoning Map
6. Photographs submitted by applicant
7. Proposed Site Plan
8. Elevations
9. E-Mails in Support of Variance

Milde Project #134-PA-2004
39204 Boulder View Drive
Scottsdale AZ 98262

We would like to build an 834 square foot addition onto our existing house. This would include space for a guest bedroom suite/sewing room, bathroom, laundry room, and additional storage space attached to the existing garage. This will give a new total under roof of 5479 SF, which will be nestled within the exterior walls of the existing garage and the front courtyard. This addition will significantly enhance the quality of our lives and the value of the property.

Through no fault of our own, our existing house (which we purchased in 1995 from William and Ruth Petchauer) was built with a 40 foot set back from Boulder View Drive and a 20 foot set back from Dusty Miller Court. We presume that this 20-foot setback was imposed by the natural terrain of the property. A very large wash extends to the west and south of the house for which there is a 17000-sq. ft NAOS easement. The existing house (on a corner lot) is, in fact, as far from the two roads as it can be without affecting the natural terrain of the wash. This is why I assume the City of Scottsdale approved the original construction with the above-mentioned setbacks. Because of this natural terrain and because the septic tank and drain fields sit to the south and east of the house, the *only* place to build an addition onto the house is on the NE corner. This is what is proposed. (see diagram). The proposed addition has a 40-foot setback from Boulder View but only a 34 foot 4 inch setback from Dusty Miller Road (54 feet 6 inches from the road edge). The other end of the house has the aforementioned 20-foot setback from Dusty Miller. Dusty Miller is a short one-block road with only four properties abutting it.

The proposed addition cannot go wide and stay behind the 40-foot setback line because

- 1) An existing bathroom (the only bathroom at this end of the house) would have to be demolished and/or the windows in it with natural lighting and ventilation would have to be covered over by a wide addition
- 2) A wide addition would also have to cover the window of the existing 2nd bedroom (At present there are only two bedrooms in this home.) This would remove the natural lighting, ventilation, and egress for this bedroom.
- 3) An existing koi pond would have to be demolished
- 4) This wide design would clash with the original lines and elevations of the existing house thereby looking like an addition rather than a part of the existing structure. This would significantly compromise the existing quality of the house. We want to build an addition that is of the same high caliber and quality as the existing home and as a property owner it is our right to do so.

This proposed addition will have no effect on the surrounding natural habitat. It would sit in the building envelope on flat terrain nestled between the garage and the existing house. It will have no effect on the view and in fact will be hidden by existing pine trees. No native habitat will be disturbed.

Our neighbors in this subdivision have no objection to our obtaining this variance.

It should be noted that the required photographs (1-16) taken on 3-7-04 rarely show a view of our house. Therefore additional photographs have been taken. These show the west end of the house, with the 20-foot setback and the adjacent wash, and the NE corner of the house as seen from Boulder View Drive and Dusty Miller Court to show the proposed building site.

Because we have no other site for a building addition, and because we cannot fit the square footage required for this addition into the space behind the 40-foot setback, we respectfully request a variance to the setback such that we can build this 834 SF addition. If the original house had been built with the correct legal setbacks of 40 feet on each road this request would be unnecessary. It is the City of Scottsdale that allowed the 20-foot setback. Denying this variance will deny us the legal right to enhance our home and property with the same quality as the existing home.

13-BA-2004



ZONING ORDINANCE VARIANCE

Application Submittal Requirements

Justification for Variance

The Board of Adjustment may not authorize a zoning ordinance variance unless ALL of the following criteria are met. Use the space provided to present your evidence that the requested variance complies; you may attach a separate sheet if you need more room.

1. Special circumstances/conditions exist which do not apply to other properties in the district:

Our residence was built by Clarence and Ruth Petchauer in 1992. The City of Scottsdale approved the construction plans on 3-28-92. These plans had a frontyard setback of 40 feet onto Boulder View Drive and a 20-foot sideyard setback on Dusty Miller Court. This makes the existing structure legal but nonconforming with the 40-foot setback requirement of a corner lot. We are requesting a variance to the setback for this residence so that the building might be legal and conforming.

2. Authorizing the variance is necessary for the preservation and enjoyment of substantial property rights:

- There is a natural area open space to the west and south of the residence making the construction of an addition impossible in that location. There is a septic tank and drain field to the south and east of the residency making the construction of an addition impossible in that area. The only addition to the existing structure can be made to the NE corner of the existing building. The proposed addition is within the existing building structure but cannot meet the 40-foot setback requirements since one end of the existing structure has a 20-foot setback. In order to improve our property and build a third bedroom onto our residence, we need this variance.

3. Special circumstances were not created by the owner or applicant:

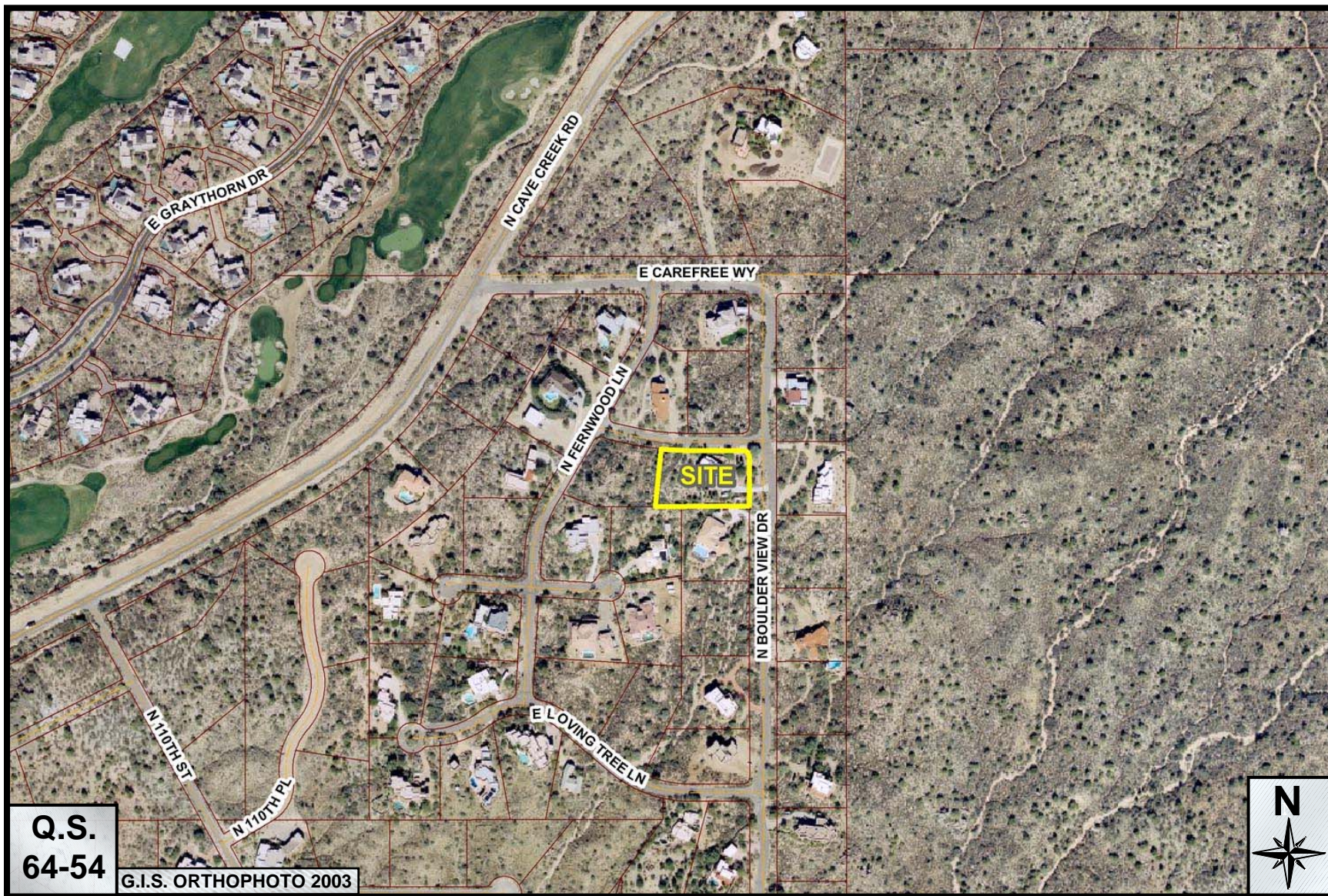
- The special circumstances requiring this variance request were not created by the owners but were created by the City of Scottsdale when it approved the original building with the 40-foot frontyard setback from Boulder View Drive and the 20-foot sideyard setback from Dusty Miller Court. Dusty Miller Court is a short with only 4 properties abutting it.

4. Authorizing the application will not be materially detrimental to persons residing or working in the vicinity, to the adjacent property, to the neighborhood, or to the public welfare in general:

- The proposed addition will have no effect on anyone residing in the neighborhood. The location of the proposed addition is within the existing building structure and will cause no visual negative impact. When we purchased our home the building envelope had been clear cut. We have done much to plant much native vegetation on the property. This has enhanced not only our property but also the view of the neighbors.
- The proposed addition will not disturb the natural vegetation and will be hidden within the existing vegetation. All of the neighbors who live near us are supportive of this project.

Planning and Development Services Department

7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 • Phone: 480-312-7000 • Fax: 480-312-7088



Q.S.
64-54

G.I.S. ORTHOPHOTO 2003

Milde Home Addition

13-BA-2004

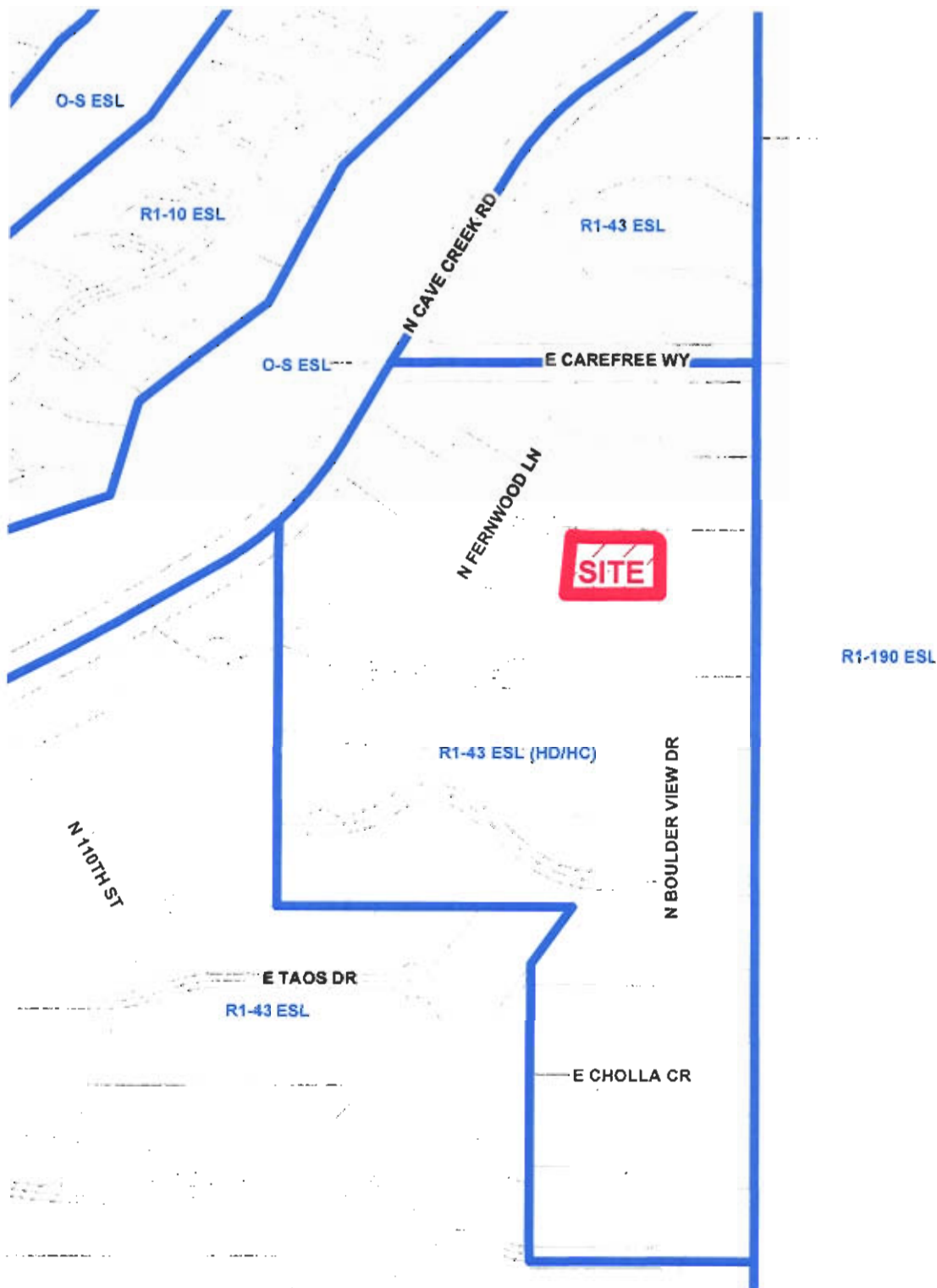
ATTACHMENT #3



Milde Home Addition

13-BA-2004

ATTACHMENT #4



13-BA-2004

Existing Conditions Photo Exhibit

Please Note:

+ = Photograph
Number and
Direction of
View

Project Information

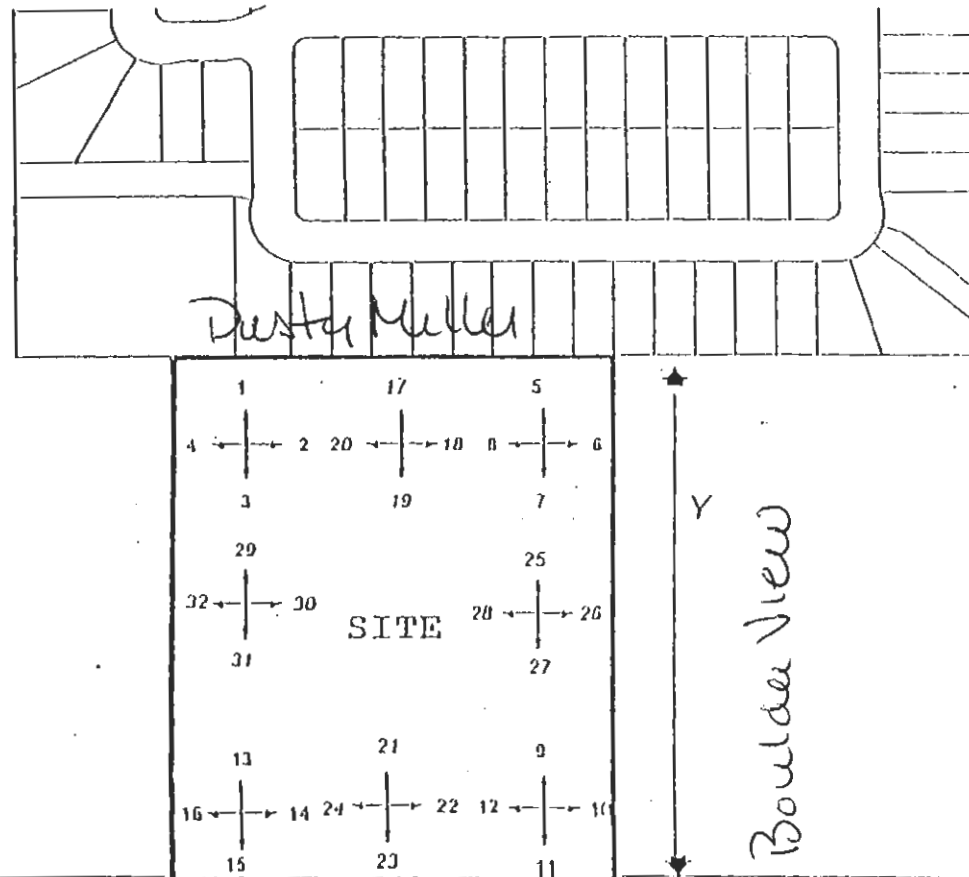
Name:

Gross Acres:

Zoning:

Parcel Number:

Street Name



CITY
OF
SCOTTSDALE

Kilde
134 PA-2004

O. S. _____

Street Name

ATTACHMENT #6

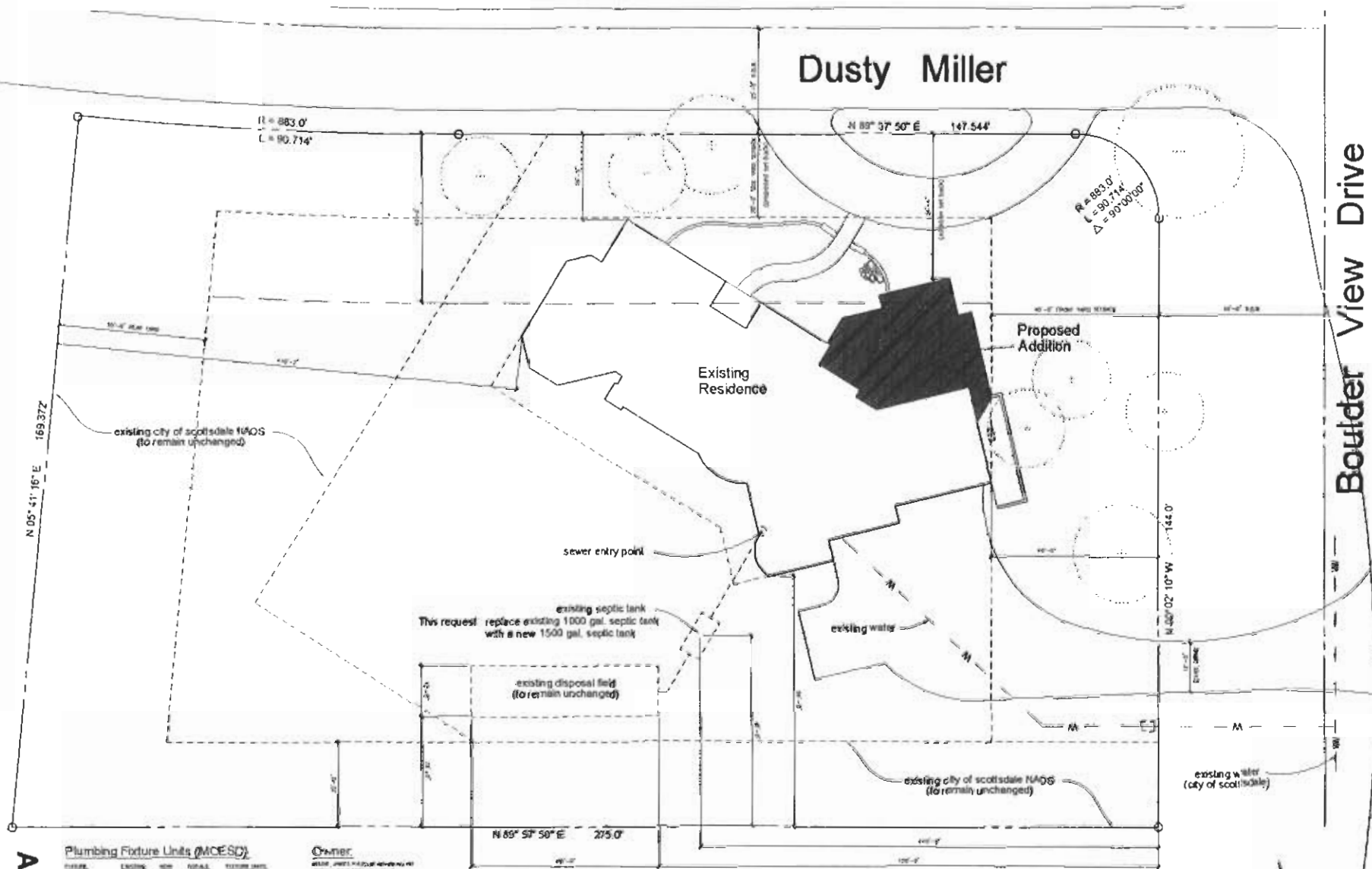
Please Note:

If distance "X" is greater than 500 ft., Also take photos 17-24.

If distance "Y" is greater than 500 ft., also take photos 25-32.

Other photographs are to be taken at the north and south ends of the site.





Plumbing Fixture Units (MCEC)

Fixture	Existing	New	Total	Fixture Units
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1
Water Closet (wc)	1	0	1	1

Notes:
 1. All plumbing work shall be in accordance with the latest edition of the International Plumbing Code (IPC) and the International Residential Code (IRC).
 2. All plumbing work shall be in accordance with the latest edition of the International Mechanical Code (IMC) and the International Energy Conservation Code (IECC).
 3. All plumbing work shall be in accordance with the latest edition of the International Fire Code (IFC) and the International Building Code (IBC).
 4. All plumbing work shall be in accordance with the latest edition of the International Electrical Code (IEC) and the International Fire Code (IFC).
 5. All plumbing work shall be in accordance with the latest edition of the International Fire Code (IFC) and the International Building Code (IBC).
 6. All plumbing work shall be in accordance with the latest edition of the International Fire Code (IFC) and the International Building Code (IBC).
 7. All plumbing work shall be in accordance with the latest edition of the International Fire Code (IFC) and the International Building Code (IBC).
 8. All plumbing work shall be in accordance with the latest edition of the International Fire Code (IFC) and the International Building Code (IBC).
 9. All plumbing work shall be in accordance with the latest edition of the International Fire Code (IFC) and the International Building Code (IBC).
 10. All plumbing work shall be in accordance with the latest edition of the International Fire Code (IFC) and the International Building Code (IBC).

Owner

Mr. & Mrs. John & Jane Doe
 39204 Boulder View Drive
 Scottsdale, Arizona 85250

Legal Description

Lot 1, Block 1, Subdivision 1, City of Scottsdale, Arizona
 1.00 acre, more or less, as shown on the plat for Subdivision 1, City of Scottsdale, Arizona, recorded in the Public Records of Maricopa County, Arizona, Book 1, Page 1.

Project Description

Replacement of existing 1000 gal. septic tank with a new 1500 gal. septic tank and disposal field.



vicinity map

existing permit # 92-0148
 preliminary review # 036427

**OSWTF
 site plan**

1" = 10'-0"



Boulder View Drive

Project Date: 11/13/04
 Revision:

Addition to the
Milde Residence
 39204 Boulder View Drive
 Scottsdale, Arizona

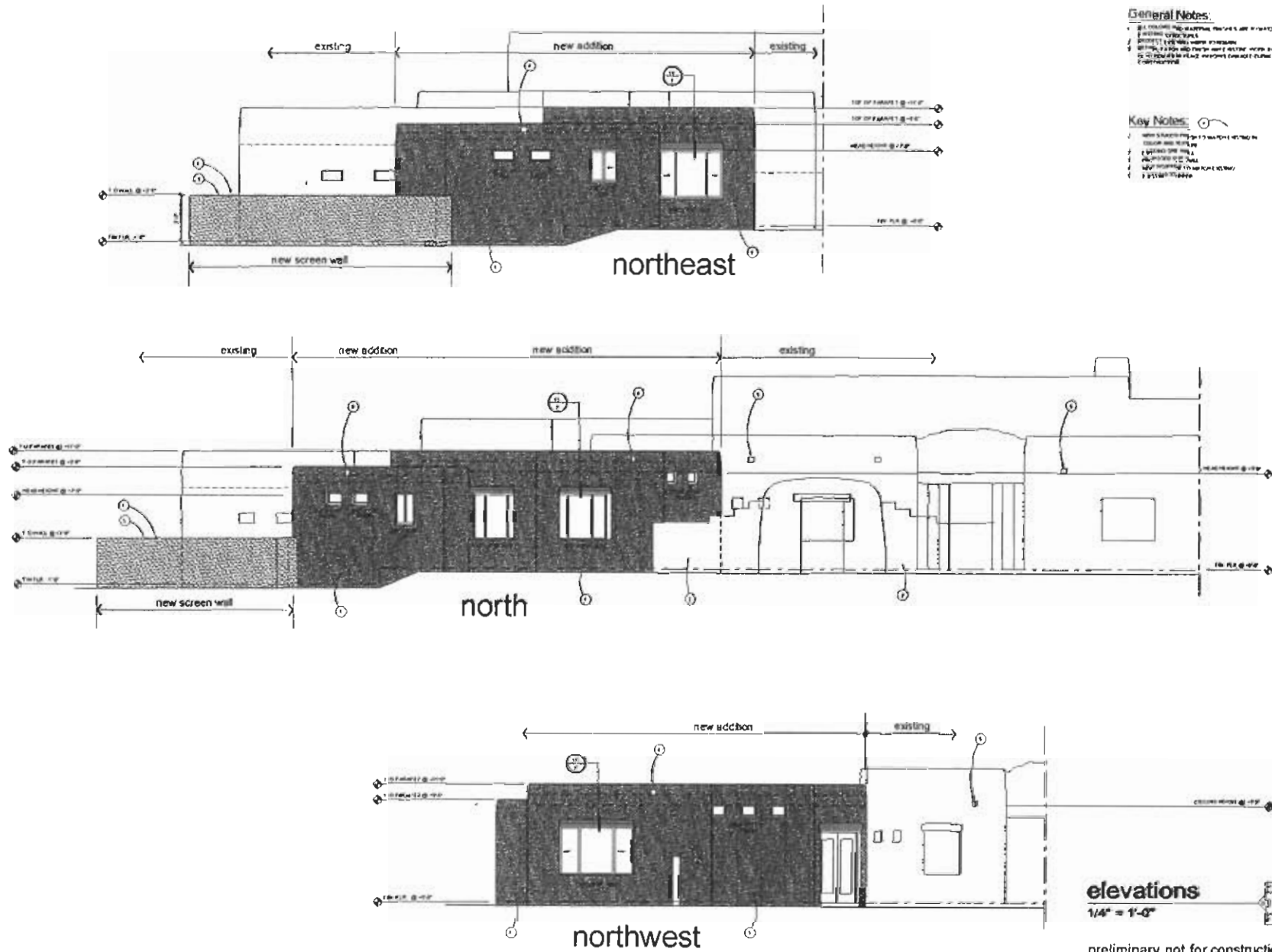
Prepared by: [Signature]
 Checked by: [Signature]
 Date: 11/13/04



Project Number:

Drawing

Site plan



General Notes:

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE (IRC).
2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE (IRC).
3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE (IRC).
4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE (IRC).

Key Notes:

1. NEW CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE (IRC).
2. NEW CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE (IRC).
3. NEW CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE (IRC).
4. NEW CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODE (IBC) AND THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE (IRC).

Addition to the
Milde Residence
3600 Boulder View Drive
Scottsdale, Arizona

Architect: J. J. J. Architects, Inc.
3600 Boulder View Drive
Scottsdale, Arizona 85251
Phone: (480) 344-1111
Fax: (480) 344-1112
www.jjjarchitects.com



13-BA-2004
10/20/04

Niederer, Keith J.

From: Jane Ceasor [janeceasor@qwest.net]
Sent: Wednesday, December 08, 2004 2:34 PM
To: KNIEDERER@scottsdaleaz.gov
Subject: Project 134-PA-2004 lot 17 Carefree Hills

Dear Mr. Kniederer:

Thank you for receiving this message. Our household had sent an e-mail some time ago, referencing our support of the subject project, but we just learned yesterday that our e-mail must not have been received and was not on file. Therefore, we are, again, requesting that our support and favor be considered in the hearing proceedings for the Milde residence variance.

We are residents of Carefree Hills, lot 24, and hereby offer our support of the Milde project, #134-PA-2004. Please feel free to call upon us if we may provide any additional information or commentary that may be helpful to you or your staff.

Thank you, again, for your receipt of this message. Your considerations are appreciated.

Jane Ceasor
38844 N. Boulderview Drive
Lot 24
Carefree Hills
Scottsdale, AZ 85262
(480)488-5025 Cell: (480)229-3002

ATTACHMENT #9

01/21/2005

Niederer, Keith J.

From: R.D. Evans [rdcaevans@cox.net]
Sent: Wednesday, December 08, 2004 8:20 AM
To: KNIEDERER@scottsdaleaz.gov
Cc: Lee Milde
Subject: Project 134-PA-2004 lot 17 Carefree Hills

Mr. Niederer,

I am a neighbor of the Milde's and mailing in support of their variance request. They have a beautiful home. I have personally reviewed the plans for their addition, and it will not only add to the beauty of their home but to the neighborhood.

I request your support for their variance!

Robert D. Evans
Carefree Hills Lot 7
480-488-5829

Niederer, Keith J.

From: Williams, Greg N.
Sent: Monday, October 18, 2004 2:52 PM
To: Niederer, Keith J.
Subject: FW: Milde Variance Project 134-PA-2004

-----Original Message-----

From: Patsy Kelley [mailto:pkelley@ipg-us.com]
Sent: Wednesday, October 13, 2004 2:55 PM
To: gwilliams@scottsdaleaz.gov
Cc: Leslie Milde
Subject: Milde Variance Project 134-PA-2004

Mr. Williams: I am a neighbor of the Jim & Leslie Milde. I live across the street at 39221 N Boulder View Drive. I am aware of and support their plans to build a bedroom addition to their house.

Sincerely,

Patsy Kelley

pkelley@ipg-us.com
480-488-5894

01/21/2005